

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
MICHAEL B. HANDRIGAN,)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-12491-NMG
)	
TRAVIS & NATALIE, INC.)	
Owner of F/V TRAVIS &)	
& NATALIE,)	
Defendants.)	
_____)	

**PLAINTIFF'S SUPPLEMENT TO OPPOSITION OF DEFENDANT'S MOTION TO
TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

Pursuant to the court's order the plaintiff supplements their opposition to the Defendant's motion to transfer venue pursuant to 28 U.S.C. §1404(a) as follows:

I. INTRODUCTION

The Defendant argues that the forum chosen by the Plaintiff is inconvenient and, pursuant to the venue transfer statute, 28 U.S.C. §1404(a), is requesting that venue be transferred to the District of Rhode Island. The Defendant's request should be denied on the grounds that this court not only has personal jurisdiction over the defendant, but this venue and forum are proper.

The Plaintiff has a right to his choice of venue **and** forum pursuant to the Jones Act as expanded by 28 U.S.C. §1391(c) and set forth by the Court in Pure Oil, and as a Jones Act seaman he is *immune* to the constriction of venue that §1440(a) would place upon him and upon §1391(c).

Even if the “convenience” of litigation in Massachusetts were to be weighed as Defendant requests, Travis & Natalie, Inc.’s contacts with Massachusetts are sufficient so as to permit this court to exercise personal jurisdiction over them making both venue and forum in this district proper.

The Defendant has not met their burden of proving that this venue is inconvenient nor have they demonstrated that considerations of convenience and judicial efficiency strongly favor litigating this case in the proposed alternative forum. Accordingly, Defendant’s motion to transfer venue should be DENIED.

II. FACTS

1. Michael B. Handrigan was a commercial fisherman serving as a member of the crew of the Defendant’s vessel, the F/V TRAVIS & NATALIE. *See* Complaint at 1, ¶1 and Defendant’s answer at 1, ¶1; both attached as Exhibit A.
2. The plaintiff has brought a claim under the Jones Act, 46 U.S.C. App. Sec. 688 *See* Complaint at 3, ¶7 and Answer at 1, ¶7.
3. The Defendant hires its crew from Massachusetts. *See* Deposition of Frederick Joseph Mattera (Captain of the F/V TRAVIS & NATALIE) (“Deposition”) at 24, Lines 17-21. All pertinent pages of Frederick Joseph Mattera’s Deposition are attached as Exhibit B.
4. The Defendant purchases supplies from vendors in Massachusetts. *Id.* at 25, Lines 5-14.
5. The Defendant has repair work done in Massachusetts. *Id.* at 26, Lines 1-18.
6. The Defendant buys fuel in Massachusetts. *Id.* at 27, Lines 14-16.
7. The Defendant buys ice in Massachusetts. *Id.* at 28, Lines 4-8.
8. The Defendant sells their product in Massachusetts. *Id.* at 28, Lines 23-25.

9. The Defendant's gross income in 2004, the year that the Plaintiff was injured serving aboard their vessel, was \$963,800. Twenty three percent of this amount, or (\$221,674) was earned by conducting business in Massachusetts. *Id.* at 29-30.
10. For the years 2002 and 2003, twenty three percent and fifty seven percent of the defendant's gross income respectively was earned by conducting business in Massachusetts. *Id.* at 30-31.
11. The defendant has been conducting business in Massachusetts for a substantial period of time and for a substantial number of dollars paid through Massachusetts banks. *Id.* at 32.
12. The defendant purchased Massachusetts state permits for fishing, lobster, summer flounder and scup. *Id.* at 34, Lines 17-21.

III. LAW AND ARGUMENT

A. Plaintiff's Choice of Venue

Though venue in this matter is proper and remains undisputed, it is so closely related to forum that it bears mention. The leading case regarding venue under the Jones Act is Pure Oil Co. v. Suarez, 384 U.S. 202 (1966). Historically, the Jones Act has provided that "[j]urisdiction in [Jones Act] actions shall be under the court of the district in which the defendant employer resides or in which his principle office is located." *Id.* at 203.

In Pure Oil, the U.S. Supreme Court expanded venue under the Jones Act to include **"wherever the defendant corporation does business"** by applying the definition of residence set forth by 28 U.S.C. § 1391(c) which states: "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the *residence* of such corporation for venue purposes." 28 U.S.C. §

1391(c); Pure Oil at 203. The Court’s expansion “broaden[ed] the general venue requirements in actions against corporations by providing a **forum** in any judicial district in which the corporate defendant “is doing business”.” Id. at 204. For its rationale, the Court quotes from Transmirra Prods. Corp. v. Fourco Glass Co.: The rationale of this sharp break with ancient formulae is a response to “a general conviction that it was ‘intolerable if the traditional concepts of “residence” and “presence” kept a corporation from being sued wherever it was creating liabilities.” Id. at 205.

Because the defendant has derived approximately one-third of its income from conducting business in Massachusetts over the past three years, venue is proper here. *See Facts* set forth *supra*.

In a Jones Act case, venue overlaps forum in that a Jones Act seaman may sue an employer corporation anywhere they do business. “Venue” and “forum” are not concepts of where a case “can” versus “should” have been brought as stated by the Defendant in their Supplemental Memorandum of Law. Instead, it should be noted that “[28 U.S.C. §]1391(c) is [] consistent with the purpose and language of *the Jones Act*, whose thrust was not primarily directed at venue, but rather at giving seamen substantive rights and a federal forum for their vindication.” Pure Oil at 205 (emphasis added).

B. Plaintiff’s Choice of Forum

1. Forum Non Conveniens

Historically, under Gulf Oil Corp. v. Gilbert and the federal doctrine of forum non conveniens, it was permissible to dismiss an action where it had been determined that the forum

had so little to do with the parties or the dispute at hand that the forum hindered the litigation.

Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 512 (1946).

“Such a dismissal would be improper today because of the federal venue transfer statute, 28 U.S.C. §1404(a): “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” By this statute, “district courts were given more discretion to transfer . . . than they had to dismiss on grounds of forum non conveniens.” Piper Aircraft Co. v. Reyno, 454 U.S. 235, 253 (1981). As a consequence, the federal doctrine of forum non conveniens has continuing application only in cases where the alternative forum is abroad.” American Dredging Co. v. Miller, 510 U.S. 443, 449 (1994) (*superseding Gilbert* by statute).

2. Forum Non Conveniens and the Jones Act

The U.S. Supreme Court has repeatedly commented upon the unavailability of forum non conveniens as a basis for dismissal of cases filed under the Federal Employers’ Liability Act [“FELA”]. Zipfel v. Halliburton Co., 832 F.2d 1477, 1487 (9th Cir. 1987). The Jones Act incorporates the FELA pursuant to 46 U.S.C. §688(a), and, both the Jones Act and the FELA have specific venue provisions which separate them from statutes aimed at general venue – like §1404(a):

FELA: Under this chapter an action may be brought in a district court of the United States, in the district court of the residence of the defendant, or in which the cause of action arose, *or in which the defendant shall be doing business at the time of commencing the action.* Id. (emphasis added).

The Jones Act, as modified by 28 U.S.C. §1391(c), provides: A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or *is doing business*, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

Regarding “cases under the [FELA] [the U.S. Supreme Court] has held that plaintiff’s choice of a forum cannot be defeated on the basis of forum non conveniens.” Gilbert at 505 *citing* Baltimore & Ohio R. Co. v. Kepner, 314 U.S. 44 (1941). In Kepner, the Court stated that the “privilege of venue, granted by the legislative body which created this right of action [under the FELA], cannot be frustrated for reasons of convenience or expense.” Kepner at 54.” Zipfel v. Halliburton Co., 832 F.2d 1477, 1487 (9th Cir. 1987).

Therefore, forum non conveniens does not apply to Jones Act cases brought in Federal District Court and neither does §1404 since application of §1404 runs contrary to and would frustrate the scope and intent of §1391(c) and, ultimately, the Jones Act seaman’s right to his choice of forum. §1404 seeks to constrict general venue based upon the convenience of the defendant where §1391(c) seeks to liberate the Jones Act seaman’s choice of specific forum and venue.

C. The §1404(a) Venue Transfer Standard

If this were not a Jones Act case and if §1404 were applied to this forum dispute, the Defendant would have a heavy burden to overcome in justifying the transfer of a case for the sake of a claimed convenience. “[T]here is a *strong* presumption in favor of a plaintiff’s forum choice, the defendant must bear the burden of proving both the availability of an adequate alternative forum and that considerations of convenience and judicial efficiency *strongly* favor

litigating the claim in the alternative forum ... [The doctrine] is used to avoid ‘serious unfairness’ and ... plaintiff’s choice of forum will be disturbed only rarely.” Nowak v. Tak How Investments, Ltd., 94 F.3d 708, 719 (1st Cir. 1996) *citing* Mercier v. Sheraton Int’l, Inc., 981 F.2d 1345, 1349 (1st Cir. 1992) (emphasis added); ScanSoft, Inc. v. Smart, 2003 U.S. Dist. LEXIS 23636, 9 (D.Mass. 2003). “Application of the doctrine is committed to the sound discretion of the trial court, whose decision will not be reversed absent a clear abuse of discretion.” Mercier, at 1349.

“[W]here, as here, there are only two parties to a dispute, the plaintiff should not be deprived of his choice of forum “except upon a clear showing of facts which either (1) establish such **oppressiveness and vexation** to a defendant as to be **out of all proportion to plaintiff’s convenience**, which may be shown to be slight or nonexistent, or (2) make trial in the chosen forum **inappropriate** because of considerations affecting the court’s own administrative or legal problems.” Id. citing Nowak v. Tak How Invs., Ltd., 94 F.3d 708, 720 (1st Cir. 1996) *quoting* Koster v. (American) Lumbermens’ Mut. Cas. Co., 330 U.S. 518, 524 (1947).

1. Defendant has Failed to Establish “Oppressiveness and Vexation”

Massachusetts is not inconvenient to this litigation. As stated in the facts *supra*, the Defendant has been conducting a substantial amount of business in Massachusetts and has not as of yet found its business forays into the Commonwealth, or the profits gathered thereby, to be inconvenient. It is not “oppressive”, nor is it a hardship, to travel from Providence to Boston in order to appear for a civil trial. In fact, many citizens of Rhode Island make a similar commute daily and without “vexation.”

The Defendant cites to Wilson v. Ohio River Co., 211 F.Supp. 666 (W.D. Pa. 1962) in their argument that “[T]he convenience to the plaintiff’s attorney in maintaining the action in Boston is not a permissible factor under §1404(a).” It is not the pleasure of the plaintiff’s attorney that has selected the venue and forum of this litigation but the pleasure of the plaintiff himself in balancing the most experienced counsel he can find with the proper venue and forum. Plaintiff’s counsel has been practicing admiralty and maritime law for more than 53 years.

Further, the Wilson court quotes the U.S. Supreme Court-approved opinion of the 3rd Circuit’s late Judge Goodrich who stated that “[t]he statute (§1404(a)) limits the privilege of the plaintiff to have his lawsuit tried in the forum of his choosing if he can there get jurisdiction over the defendant.” Wilson at 667. This court has both subject matter jurisdiction and personal jurisdiction over the defendant – neither of which has been contested. Since this court *does* have jurisdiction over the defendant, the Wilson case supports the plaintiff’s position that this court is the proper venue and forum for this litigation.

Defendant’s counsel is no stranger to this court. Upon information and belief he is not only a respected and outstanding member of the Massachusetts Bar but also currently has two cases pending in this very district and has averaged taking two case a year in this district. *See* PACER Output attached as Exhibit C.

The Defendant corporation is also no stranger to Massachusetts or to paying the cost of transportation to and from the Commonwealth during the course of its regular business with various corporations in this state. The drive to Boston, *arguendo*, costs less in fuel and parking than defendant’s usual manner of maritime travel. Therefore, the defendant cannot now claim that such easier and less costly travel is an unreasonable burden simply because the matter at issue is litigation.

According to Mapquest, the drive from Narragansett, RI, the home port of Travis & Natalie, Inc., to Fairhaven, MA, the location of one of the Plaintiff's Massachusetts vendors, is approximately 45 miles and may be driven in 1 hour and 13 minutes. *See* Affidavit of Frederick J. Mattera attached as Exhibit D; Deposition at 26, Lines 12-18; MapQuest result attached as Exhibit E. The drive from Narragansett, RI to One Courthouse Way in Boston is 34 miles more and only adds 20 minutes more drive time. *See* MapQuest result attached as Exhibit F.

With the advancement of communications and digital technologies, the Doctrine of Forum Non Conveniens is gradually becoming a dying concept. Carnival Cruise Lines v. Shute, 499 U.S. 585 (1991). Where most pleadings are being done electronically and even depositions may be done by vide conferencing, the days of the doctrine and §1404 are likely numbered.

In the course of the instant litigation all pleadings and written discovery shall occur electronically or by post and, if the Defendant is correct as to where the witnesses and persons of interest are to be found (potentially as many as 21), such depositions shall be conducted in Rhode Island. *See* Deposition at 45-47. Therefore, over the course of this litigation Plaintiff's counsel shall be required to visit Rhode Island far more often than the Defendant shall have to come to Boston making the Plaintiff's "convenience" "nonexistent."

The burden of obtaining witnesses and relevant documents is likely to be about equal, the vessel may be videotaped if necessary, and, though the Defendant may feel that litigation in Massachusetts is inconvenient, this is not the type of "oppressiveness and vexation" disproportionate to Plaintiff's "convenience" of litigating in a district within which the Defendant corporation conduct regular and substantial business.

2. Trial in Massachusetts is not Inappropriate

The Commonwealth of Massachusetts has a vested interest in hearing this case in that Defendant has ‘purposefully avail[ed] [themselves] of the privilege of conducting activities within [Massachusetts], thus invoking the benefits and protections of its laws.’ Hanson v. Denckla, 357 U.S. 235, 253 (1958). As such, they should reasonably anticipate being haled into a Massachusetts court. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

IV. CONCLUSION

The Defendant’s request to transfer venue should be denied on the grounds that this court not only has personal jurisdiction over the defendant, but this venue and forum are proper.

The Plaintiff has a right to his choice of venue **and** forum pursuant to the Jones Act as expanded by 28 U.S.C. §1391(c) and set forth by the Court in Pure Oil, but as a Jones Act seaman he is *immune* to the constriction of venue that §1440(a) would place upon him and upon §1391(c).

Even if the “convenience” of litigation in Massachusetts were to be weighed as Defendant requests, Travis & Natalie, Inc.’s contacts with Massachusetts are sufficient so as to permit this court to exercise personal jurisdiction over them making both venue and forum in this district proper.

The Defendant has not met their burden of proving that this venue is inconvenient nor have they demonstrated that considerations of convenience and judicial efficiency strongly favor litigating this case in the proposed alternative forum. Accordingly, Defendant’s motion to transfer venue should be DENIED.

WHEREFORE, the plaintiff requests that the Defendant's Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) be DENIED.

Respectfully submitted,
by his attorney,

/s/ David B. Kaplan
DAVID B. KAPLAN, ESQUIRE
BBO # 258540
THE KAPLAN/BOND GROUP
88 BLACK FALCON AVENUE, SUITE 301
BOSTON, MA 02210
(617) 261-0080

Dated: June 15, 2005

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

C.A. NO.: _____

MICHAEL B. HANDRIGAN,
Plaintiff,

v.

TRAVIS & NATALIE, INC.,
Owner of F/V TRAVIS & NATALIE,
Defendants.

COMPLAINT

THE PARTIES

1. The plaintiff, Michael B. Handrigan, is an individual who resides in Narragansett, Rhode Island and at all times hereinafter referred to, was a commercial fisherman, serving as a member of the crew of the F/V TRAVIS & NATALIE.

2. The defendant, Travis & Natalie, Inc., owner of F/V TRAVIS & NATALIE, a duly organized corporation existing under the laws of the State of Rhode Island, and doing business in the Commonwealth of Massachusetts, and at all times hereinafter referred to, owned, operated and controlled the F/V TRAVIS & NATALIE and employed the plaintiff, Michael Handrigan.

JURISDICTION

This is a case of maritime jurisdiction pursuant to 28 U.S.C. 1333(1).

FACTUAL ALLEGATIONS

3. On or about May 4, 2004, the plaintiff was in the employ of the defendant as a seaman and member of the crew of the F/V TRAVIS & NATALIE. While

the F/V TRAVIS & NATALIE was in navigable waters and while the plaintiff was in the exercise of due care and in the performance of his duties, he sustained severe and painful personal injuries.

COUNT I
(Jones Act)

4. Paragraphs 1-3 are realleged and incorporated herein.

5. The injuries sustained by the plaintiff were not caused by any fault on his part, but were caused by the fault of the defendant, its agents, or servants, as follows:

- a) Failure to use due care to provide and maintain a seaworthy vessel with safe and proper appliances;
- b) Failure to use due care to make reasonable and periodic inspection of said vessel, its equipment and appliances;
- c) Failure to use due care to furnish the plaintiff with a reasonably safe place in which to perform his work;
- d) Failure and negligence of fellow employees;
- e) Failure and negligence in other respects that will be shown at the trial.

6. As a result of the said injuries, the plaintiff has suffered great pain of body and anguish of mind, lost a great deal of time from his usual work, incurred medical and hospital expenses, and has suffered and will suffer other damages as will be shown at the trial.

7. This cause of action is brought under the Merchant Marine Act of 1920, commonly called the Jones Act.

REQUEST FOR RELIEF

1. Under Count I, that this court enters judgment in favor of the plaintiff against the defendant.

2. For such other relief as this court deems appropriate.

COUNT II
General Maritime Law
(Unseaworthiness)

8. Paragraphs 1-7 are realleged and incorporated herein.

9. The injuries sustained by the plaintiff were due to no fault of his, but were caused by the unseaworthiness of the defendant's vessel, its appliances, appurtenances, and/or equipment.

10. As a result of the said injuries, plaintiff has suffered great pain of body and anguish of mind, lost a great deal of time from his usual work, incurred medical and hospital expenses, and has suffered and will continue to suffer other damages as will be shown at trial.

11. This cause of action is brought under the General Maritime Law based upon unseaworthiness and is for the same cause of action as Count I.

REQUEST FOR RELIEF

1. Under Count II, that this court enter judgment in favor of the plaintiff against the defendant.

2. For such other relief as this court deems appropriate.

COUNT III
(Maintenance and Cure)


12. Paragraphs 1-11 are realleged and incorporated herein.
13. As a result of his injuries, the plaintiff incurred expenses for his maintenance and cure and will continue to do so all to his damage.

REQUEST FOR RELIEF

1. Under Count III, that this court enter judgment in favor of the plaintiff against the defendant.
2. For such other relief as this court deems appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS.

Respectfully submitted
by his attorney,


DAVID B. KAPLAN #258540
The Kaplan/Bond Group
88 Black Falcon Avenue, Suite 301
Boston, MA 02210
(617) 261-0080

Dated: 11/22/04

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MICHAEL B. HANDRIGAN,
Plaintiff,

v.

TRAVIS & NATALIE, INC.,
Owner of F/V TRAVIS & NATALIE,
Defendant.

C.A. NO.: _____


SEAMAN'S AFFIDAVIT

I, DAVID B. KAPLAN, Attorney for the plaintiff in the above-entitled action, on oath depose and state as follows:

The plaintiff in the above-entitled action is a seaman and claims the benefits of the United States Code Annotated, Title 28, Section 1916, which states that:

In all courts of the United States,
seaman may institute and prosecute
suits and appeals in their own names
and for their own benefit for wages
or salvage or the enforcement of laws
enacted for their health or safety
without prepaying fees or costs or
furnishing security therefor.

Respectfully submitted
by his attorney,


DAVID B. KAPLAN #258540
The Kaplan/Bond Group
88 Black Falcon Avenue, Suite 301
Boston, MA 02210
(617) 261-0080

Dated: November 22, 2004

JS 44
(Rev. 3/99)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MICHAEL B. HANDRIGAN

DEFENDANTSTRAVIS & NATALIE, INC., owner of
F/V TRAVIS & NATALIE(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David B. Kaplan, Esquire (617) 261-0080
THE KAPLAN/BOND GROUP
88 Black Falcon Avenue, Suite 301
Boston, MA 02210

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 800 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- Transferred from ☐ 5 another district (specify) _____
- ☐ 6 Multidistrict Litigation
- Appeal to District Judge from ☐ 7 Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Maritime personal injury jurisdiction based on 28 U.S.C. 1333 (1)

VII. REQUESTED IN COMPLAINT:CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE

None

DOCKET NUMBER

DATE

November 22, 2004

SIGNATURE OF ATTORNEY OF RECORD

David B. Kaplan

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FEE

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) MICHAEL B. HANDRIGAN v. TRAVIS & NATALIE, INC., owner of F/V TRAVIS & NATALIE
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- | | | | |
|--------------|------|---|--|
| <u> </u> | I. | 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. | |
| <u> </u> | II. | 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. | *Also complete AO 120 or AO 121 for patent, trademark or copyright cases |
| <u> X </u> | III. | 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. | |
| <u> </u> | IV. | 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900. | |
| <u> </u> | V. | 150, 152, 153. | |
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
- YES NO
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)
- YES NO
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?
- YES NO
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?
- YES NO
7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).
- YES NO
- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?
- | | | |
|------------------|------------------|------------------|
| EASTERN DIVISION | CENTRAL DIVISION | WESTERN DIVISION |
|------------------|------------------|------------------|
- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?
- | | | |
|-------------------------|------------------|------------------|
| <u>EASTERN DIVISION</u> | CENTRAL DIVISION | WESTERN DIVISION |
|-------------------------|------------------|------------------|

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME DAVID B. KAPLAN, ESQUIRE

ADDRESS THE KAPLAN/BOND GROUP, 88 Black Falcon Avenue, St. 301

TELEPHONE NO. Boston, MA 02210
(617) 261-0080

United States District Court

DISTRICT OF _____

SUMMONS IN A CIVIL ACTION

MICHAEL B. HANDRIGAN,

v.

CASE NUMBER: _____

TRAVIS & NATALIE, INC., owner of
F/V TRAVIS & NATALIE

TO: (Name and Address of Defendant)

Travis & Natalie, Inc.
113 Lewiston Avenue
West Kingston, RI 02892

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

David B. Kaplan, Esquire
THE KAPLAN/BOND GROUP
88 Black Falcon Avenue, Suite 301
Boston, MA 02210

(617) 261-0080

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

BY DEPUTY CLERK

JRO:vc 37168 pleading\37168answer.wpd

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS**

MICHAEL B. HANDRIGAN,
Plaintiff,

v.

TRAVIS & NATALIE, INC.,
Owner of F/V TRAVIS & NATALIE,
Defendants,

:
:
:
:
:
:
:

C.A. No.: 04-12491

ANSWER OF DEFENDANT

The Parties

1. Admit, that at certain times Michael B. Handrigan was an individual who served as a member of the crew of the F/V Travis and Natalie and deny the remaining allegations for lack of specificity.

2. Admit, that Travis and Natalie, Inc. owned F/V Travis and Natalie and is a Rhode Island Corporation. Deny the remainder of the allegations.

Jurisdiction

No response is required.

3. The allegation is denied in several parts; that it is unknown at present whether on May 4, 2004, plaintiff was an employee of the defendant; whether Travis and Natalie was in navigable waters; it is denied that the plaintiff was in the exercise of due care and it is further denied that he sustained severe and painful personal injuries.

COUNT I

4. Defenses to paragraphs 1 through 3 are repeated and incorporated by reference.

5. Denied.

6. Denied.

7. Admitted.

REQUEST FOR RELIEF

1. That the Court determine that plaintiff is not entitled to the relief sought.
2. That the Court determine that plaintiff is not entitled to the relief sought.

WHEREFORE, defendant demands judgment against the plaintiff, plus interest, costs and attorneys fees.

COUNT II

8. Defenses to paragraphs 1 through 7 are repeated and incorporated by reference.
9. Denied.
10. Denied.
11. Admitted.

REQUEST FOR RELIEF

1. That the Court determine that plaintiff is not entitled to the relief sought.
2. That the Court determine that plaintiff is not entitled to the relief sought.

WHEREFORE, defendant demands judgment against the plaintiff, plus interest, costs and attorneys fees.

COUNT III

12. Defenses to paragraphs 1 through 11 are repeated and incorporated by reference.
13. Denied.

REQUEST FOR RELIEF

1. That the Court determine that plaintiff is not entitled to the relief sought.
2. That the Court determine that plaintiff is not entitled to the relief sought.

WHEREFORE, defendant demands judgment against the plaintiff, plus interest, costs and attorneys fees.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Defendant affirmatively pleads that if plaintiff was injured when and as described, it was due in whole or in part to the plaintiff's own negligence and failure to exercise his duty of care, skill and knowledge in the performance of his work reasonably required of a seaman of the plaintiff's experience and not due to any negligence, fault or unseaworthy condition on the part of the defendant or any person for whom defendant may be legally responsible.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

SECOND DEFENSE

Defendant affirmatively pleads lack of proximate cause between any act or negligence of the defendant or any of them, or any unseaworthy condition aboard the *F/V Travis and Natalie* and the alleged injuries claimed by the plaintiff.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

THIRD DEFENSE

Defendant affirmatively pleads that if the injuries alleged were sustained, the plaintiff has not provided documentary medical proof of said injuries, that said injuries were incurred in the service of the vessel, or that the plaintiff's alleged medical treatment was not reimbursed or reimbursable, and that medical treatment was other than palliative.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

FOURTH DEFENSE

Defendant avers accord and satisfaction for all maintenance and cure properly submitted by the plaintiff.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

FIFTH DEFENSE

If injuries occurred to plaintiff they did not arise while plaintiff was in service of the vessel.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

SIXTH DEFENSE

Defendant affirmatively pleads the defense of laches to plaintiff's claims.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

SEVENTH DEFENSE

Plaintiff failed to timely report any injury to the captain before leaving the vessel.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

EIGHTH DEFENSE

Defendant affirmatively pleads that if the injuries alleged were sustained, they did not occur while plaintiff was in the service of the vessel.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

NINTH DEFENSE

The plaintiff failed to observe and employ a safe, alternative practice, thus, contributing to his own injury - if any.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

TENTH DEFENSE

Defendant affirmatively pleads that if the plaintiff was injured as alleged, which is specifically denied, after such injury occurred, the plaintiff had been found fit for duty or service onboard the defendant's vessel, and the defendant owes no further duty or maintenance in cure to the plaintiff.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

ELEVENTH DEFENSE

Defendant affirmatively pleads that plaintiff has failed to produce evidence of actual expenditures equivalent to room and board on the subject vessel, if any.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

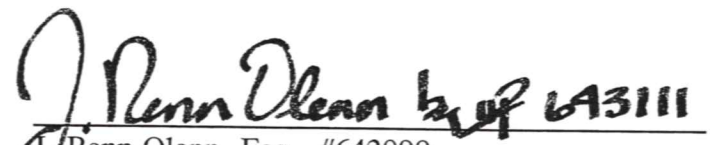
TWELFTH DEFENSE

Defendant affirmatively pleads the plaintiff's wilful refusal to provide documentary evidence of his injury or treatment, failed to report or describe his preexisting conditions, failed to submit to examination or scrutiny of his medical claims for which he claims "cure", and non-cooperation in the description, reporting or submission of his claim.

WHEREFORE, defendant demands judgment against plaintiff, attorney's fees and costs for the defense of this claim for relief.

Defendant demands a trial by jury.

DEFENDANTS,
By their Attorney,

 J. Renn Olenn Esq. #642090

OLENN & PENZA, LLP

530 Greenwich Avenue

Warwick, RI 02886

PHONE: (401) 737-3700

FAX: (401) 737-5499

CERTIFICATION

I certify that I sent a true copy of the within on December 23, 2004 to:

David B. Kaplan, Esq.
THE KAPLAN / BOND GROUP
88 Black Falcon Avenue, Suite 301
Boston, MA 02210

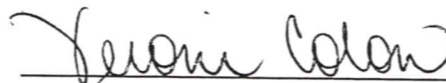


Exhibit B

May 24, 2005

Frederick Joseph Mattera

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL B. HANDRIGAN :
 :
VS. :C.A. NO. 04-12491 NMG
 :
TRAVIS & NATALIE, INC. :

DEPOSITION OF FREDERICK JOSEPH MATTERA, a
witness in the above-entitled cause, taken on
behalf of the Plaintiff, before Nicole Reis, RPR,
Commissioner and Certified Court Reporter in and
for the State of Rhode Island, at the Office of
Olenn & Penza, LLP, 530 Greenwich Avenue, Warwick,
Rhode Island on May 24, 2005 at 2:00 P.M.

PRESENT:

FOR THE PLAINTIFF . . . THE KAPLAN/BOND GROUP
BY: DAVID KAPLAN, ESQUIRE

FOR THE DEFENDANT . . . OLENN & PENZA, LLP
BY: J. RENN OLENN, ESQUIRE

ALLIED COURT REPORTERS, INC.
115 PHENIX AVENUE
CRANSTON, RI 02920
(401) 946-5500
www.alliedcourtreporters.com

May 24, 2005

Frederick Joseph Mattera

Page 24

1 Q. New York?

2 A. Yes.

3 Q. New Jersey?

4 A. Yes.

5 Q. Cape? Maine?

6 A. Yes.

7 Q. So, your involvement with employment is not
8 limited to Rhode Island, it is also involved with
9 other jurisdictions where you sometimes have to
10 get crew members?

11 MR. OLENN: I'll object to the form of
12 that question. Your question, you're leading
13 question was a hypothetical. "Would he do that
14 hiring"? You're now suggesting that since he
15 would, that means his involvement in doing so.

16 MR. KAPLAN: Let's ask him.

17 Q. Do you hire men from Massachusetts?

18 A. Yes.

19 Q. You have no restriction from hiring a person from
20 Massachusetts, do you?

21 A. No.

22 Q. And if I'm correct, you have, indeed, hired men
23 from Massachusetts?

24 MR. OLENN: What period of time are we
25 talking, like, forever?

May 24, 2005

Frederick Joseph Mattera

Page 25

1 MR. KAPLAN: No, not talking forever.

2 Q. Within the past five years?

3 A. Yes.

4 Q. Now, in addition to hiring people from
5 Massachusetts, do you purchase any supplies from
6 any vendor in Massachusetts?

7 A. Yes.

8 Q. Can you tell me who you worked with in purchasing
9 supplies?

10 A. NAT Builders.

11 Q. Who else?

12 A. Reidar's, Levin.

13 Q. Where are they located?

14 A. Fairhaven.

15 Q. Is that somewhat regular, tearing up nets and
16 things, for the kind of fishing that you do?

17 A. No.

18 Q. What kind of fishing do you do?

19 A. Trawling, using nets.

20 Q. And in trawling, using nets, are you suggesting
21 that there is no damage to these nets?

22 A. No.

23 Q. There is damage?

24 A. Yes.

25 Q. When a net is damaged, you seek either to repair

May 24, 2005

Frederick Joseph Mattera

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1 it or replace it, don't you?

2 A. Repair, yes.

3 Q. Yes what?

4 A. Yes, both. Yes to both.

5 Q. And the people you've just mentioned are involved
6 in that kind of a business?

7 MR. OLENN: Excuse me. Object to form.
8 What people were you talking about?

9 MR. KAPLAN: He named two, and I can't
10 remember them.

11 MR. OLENN: Reidar and Levin.

12 Q. Reidar and Levin, do they do that kind of
13 business?

14 A. Yes.

15 Q. Located in Fairhaven?

16 A. Yes.

17 Q. And do you do business with them?

18 A. Yes.

19 Q. What does a net cost when you buy a new one?

20 A. They range from three to \$12,000.

21 Q. Do you have any idea, at this time, as to how
22 often you have to incur that expense from
23 Massachusetts vendors?

24 A. It's random.

25 Q. Would you agree with me that it's a substantial

May 24, 2005

Frederick Joseph Mattera

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1 piece of money; that nets are very expensive?

2 A. No, relative.

3 Q. Three to \$12,000 is not expensive?

4 A. Yes.

5 Q. I think I gave you a double negative. Do you
6 consider the cost of three to \$12,000 a
7 substantial expense?

8 MR. OLENN: Object to the form.

9 Substantial, it's an expense, that's a percentage
10 of --

11 MR. KAPLAN: I'll withdraw the
12 substantial, and give you an expense.

13 A. Yes.

14 Q. What else do you buy from Massachusetts vendors
15 besides nets?

16 A. Fuel.

17 Q. How much do you buy?

18 A. I'd say 8,000, say anywhere from five to
19 10,000 gallons.

20 Q. How often?

21 A. Once or twice during a year.

22 Q. How much would that --

23 A. Sometimes none at all.

24 Q. How much would that amount to, approximately?

25 A. Anywhere from three to, you know, \$10,000.

May 24, 2005

Frederick Joseph Mattera

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1 Q. What else do you -- Mr. Mattera, you're a very
2 sophisticated person.

3 MR. OLENN: This is not a question.

4 Q. I'm trying to establish, what else do you do in
5 Massachusetts relating to your business
6 enterprise, other than selling? I'll get to
7 selling, later.

8 A. I buy ice, also.

9 Q. Give me some idea of what your cost of ice is?

10 A. The most money I've spent probably in the
11 last five years for one year was \$5,000.

12 Q. What about repairs, do you do any repairs in
13 Massachusetts?

14 A. No.

15 Q. Let me ask you, what else can you think of that
16 you do? Do you grub, do you do anything of that
17 nature?

18 A. No.

19 Q. Is there anything else you can think of that you
20 do, any other expense you incur in Massachusetts
21 for the operation of your vessel?

22 A. No.

23 Q. Okay. Then let's get to sales of product. You do
24 sell your product in Massachusetts, don't you?

25 A. Yes.

May 24, 2005

Frederick Joseph Mattera

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1 Q. Is that on a regular basis?

2 A. No.

3 Q. Well, you've reviewed your profit and loss
4 statements for the past few years, haven't you?

5 A. Yes.

6 Q. Working backwards, that is for the year 2004, what
7 do you say your gross income was?

8 A. \$963,800.

9 Q. I'm sorry?

10 A. I'm sorry. \$963,800.

11 MR. OLENN: Excuse me. May I? Do we
12 have an agreement that these documents, the profit
13 and loss statements that are in your hands are
14 going to remain confidential?

15 MR. KAPLAN: I'll give them back to you
16 after this is done.

17 MR. OLENN: It's on the record.

18 MR. KAPLAN: If you're asking if I'm
19 going to go to somebody else with it, the answer
20 is no.

21 MR. OLENN: The answer is it will remain
22 confidential?

23 MR. KAPLAN: Yes.

24 THE WITNESS: Thank you.

25 MR. KAPLAN: I'm no IRS guy, you know.

May 24, 2005

Frederick Joseph Mattera

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1 Let's go back on.

2 Q. What percentage of that figure was sold in
3 Massachusetts?

4 A. Twenty-three percent.

5 Q. So, is it fair for me to conclude that 23 percent
6 of your gross sales for the year '04 was in
7 Massachusetts?

8 A. Yes.

9 Q. Would you consider that somewhat substantial?

10 MR. OLENN: Objection.

11 MR. KAPLAN: Good question. Don't you
12 consider that --

13 MR. OLENN: 23 percent is 23 percent.

14 Q. Focusing your attention on January to December,
15 '03, that's the year prior, I'm sure you've
16 reviewed your records. What was your gross income
17 for that year?

18 A. \$773,400.

19 Q. Now, reviewing the list of buyers, what percentage
20 of the purchases were in Massachusetts?

21 MR. OLENN: Purchases or sales?

22 MR. KAPLAN: Pardon?

23 MR. OLENN: What are you talking about,
24 purchases or sales?

25 MR. KAPLAN: Same thing, sales. Sales is

May 24, 2005

Frederick Joseph Mattera

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1 okay.

2 A. Fifty-seven percent.

3 Q. And what will be the number, how much in dollars?

4 A. \$440,000.

5 Q. Referring now to the year, '02, was the only
6 Massachusetts purchaser Whaling City?

7 A. No.

8 Q. Who else?

9 A. Base, North Wind, and Whaling City.

10 Q. What percentage of your grows sales was sold in
11 Massachusetts?

12 A. Approximately 23 percent.

13 Q. And what do you say is the dollar value?

14 A. Approximately, \$180,000.

15 MR. KAPLAN: I don't think I had this one
16 marked yet. This is Exhibit 2, please.

17 (PLAINTIFF'S EXHIBIT 2 MARKED FOR ID)

18 Q. Now, Mr. Mattera, are you involved in the
19 ownership, or have an interest in any other vessel
20 other than the TRAVIS & NATALIE?

21 A. No.

22 Q. Does your brother own a vessel of his own?

23 A. No.

24 Q. Is he involved in the TRAVIS & NATALIE?

25 A. Yes.

May 24, 2005

Frederick Joseph Mattera

Page 32

1 Q. Does the business that you conduct require or have
2 any advertising?

3 A. No.

4 Q. How do you contact your buyers?

5 A. Verbal. Verbal agreements/verbal contact.

6 Q. For example, Whaling City, you've been conducting
7 business with them for a substantial period of
8 time?

9 A. Yes.

10 Q. And for substantial number of dollars?

11 A. Yes.

12 Q. How do you communicate with them?

13 A. Via phone, E-mail.

14 Q. Do you use the mails in any way? Do you send
15 bills or anything of that nature?

16 A. No.

17 Q. And is it paid to you by check?

18 A. Yes.

19 Q. On a Massachusetts bank?

20 A. Yes.

21 Q. All of the business you conduct with your
22 Massachusetts buyers, you're paid through
23 Massachusetts banks?

24 A. Yes.

25 Q. Do you register to do business in Massachusetts?

May 24, 2005

Frederick Joseph Mattera

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1 state permits, of which I have.

2 Q. You have federal permits, which permits you to
3 fish where?

4 THE WITNESS: In federal waters, outside
5 of the boundary zone out to 200 miles?

6 MR. KAPLAN: Right.

7 A. The EEZ, Exclusive Economic Zone.

8 Q. Do you have state permits?

9 A. Yes.

10 Q. What does that entitle you? Where do they come
11 from, first of all?

12 A. Massachusetts, Rhode Island, New York, New
13 Jersey.

14 Q. So these state permits you have to pay for, don't
15 you?

16 A. Yes.

17 Q. What permits do you have from Massachusetts that
18 you paid for?

19 A. Fishing, lobster, and they're like a
20 supplement permit for two species of fish being
21 summer flounder and scup.

22 Q. And do you have to pay any money for that?

23 A. Yes.

24 Q. What do you pay? Does the pay depend on the
25 catch, the amount of the catch, or flat fee?

May 24, 2005

Frederick Joseph Mattera

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1 complaint. They are, for the Plaintiff, Michael
2 B. Handrigan. You know Mr. Handrigan, do you not?

3 A. Yes.

4 Q. Do you know where this Plaintiff lives?

5 A. Yes.

6 Q. Do you know where this Plaintiff works?

7 THE WITNESS: Presently?

8 MR. OLENN: Yes.

9 A. No.

10 Q. Did Mr. Handrigan work for you during the calendar
11 year 2004?

12 A. Yes.

13 Q. Did he work for you before 2004?

14 A. No. Not to my knowledge.

15 Q. So to the best of your recollection, the
16 Plaintiff, Michael B. Handrigan, worked for Travis
17 & Natalie, Inc. during only the calendar year
18 2004, correct?

19 A. Yes.

20 Q. Now, what town or county does Michael B. Handrigan
21 live in?

22 A. Narragansett.

23 Q. Is that in Rhode Island?

24 A. Yes.

25 Q. And what town or county do the officers of Travis

May 24, 2005

Frederick Joseph Mattera

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1 & Natalie, Inc. live in?

2 A. Richmond.

3 Q. Rhode Island?

4 A. Yes.

5 Q. How far are those two towns from each other?

6 A. Approximately 15 miles.

7 Q. How far is Richmond, Rhode Island from downtown
8 Providence, approximately?

9 A. Twenty-five miles.

10 Q. What's the driving time to downtown Providence
11 from your -- from the home of the officers of
12 Travis & Natalie, Inc.

13 A. Thirty minutes.

14 Q. And are you familiar with the driving time from
15 Narragansett, Rhode Island to downtown Providence?

16 A. Yes.

17 Q. How long is that?

18 A. Forty minutes.

19 Q. How far is it, approximately?

20 A. I'd say 30/32 miles.

21 Q. Are you aware of whether it is at least twice as
22 far to Boston, Massachusetts from both Richmond
23 and Narragansett than it is from Providence?

24 A. Oh, yes.

25 MR. KAPLAN: I'm going to object to this

May 24, 2005

Frederick Joseph Mattera

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1 entire line of questioning. I don't see any
2 relevance to it. If you wish to pursue it, it's
3 okay.

4 Q. Is it more convenient for you, Mr. Mattera, as an
5 officer of TRAVIS & NATALIE to travel to
6 Providence or Boston to have your case heard?

7 A. Providence.

8 Q. Who were the members of your crew in 2004 who may
9 have known of Mr. Handrigan, either because they
10 served with him or may simply know of him from
11 being in the fishing community?

12 A. Peter Tucco and Ed Coughlin.

13 Q. So they may be potential witnesses in the case?

14 A. Yes.

15 Q. Where do they live, sir?

16 A. Jamestown.

17 Q. Is that in Rhode Island?

18 A. Yes. Narragansett.

19 Q. Also in Rhode Island?

20 A. Yes.

21 Q. Now, approximately how many different crewmen
22 worked for Travis & Natalie, Inc. aboard the
23 fishing vessel, F/V TRAVIS & NATALIE during the
24 calendar year 2004?

25 A. Approximately 16/17 crewmen.

Exhibit C

Select A Case

This person is a party in 10 cases.

<u>1:98-cv-10736-NG</u>	McNulty v. Huntress, Inc.	filed 04/28/98
<u>1:98-cv-10737-NG</u>	McNulty v. Huntress Inc.	filed 04/28/98
<u>1:98-cv-11921-RGS</u>	Faherty v. Benthos Seafood, In	filed 09/18/98
<u>1:99-cv-12443-RCL</u>	Reynolds v. Nordic Fisheries,Inc	filed 11/29/99
<u>1:00-cv-10059-PBS</u>	Kezirian v. The Penn Mutual Life	filed 01/06/00
<u>1:02-cv-10830-REK</u>	Del Prete, et al v. United States, et al	filed 05/08/02
<u>1:02-cv-10922-WGY</u>	Lewis v. CPR Fishing, Inc.	filed 05/20/02
<u>1:03-cv-12448-REK</u>	Weckesser v. F/V Katrina Lee et al	filed 12/04/03
<u>1:04-cv-12059-JLT</u>	Dacosta v. CPR Fishing, Inc.	filed 09/24/04
<u>1:04-cv-12491-NMG</u>	Handrigan v. Travis & Natalie, Inc.	filed 11/24/04

PACER Service Center			
Transaction Receipt			
06/15/2005 08:45:21			
PACER Login:	kb0100	Client Code:	
Description:	Search	Search Criteria:	Last Name: olenn First Name: j. Middle Name: renn Type: aty
Billable Pages:	3	Cost:	0.24

Exhibit D

JRO:MKD:ljc 37168 \pleading\37168Affidavit

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MICHAEL B. HANDRIGAN

VS.

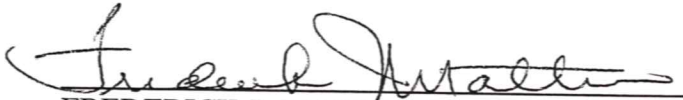
C.A. NO. 04-12491 NMG

TRAVIS & NATALIE, INC.,
Owner of F/V TRAVIS & NATALIE

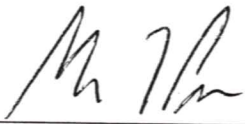
AFFIDAVIT

I, Frederick J. Mattera, of 113 Lewiston Avenue, West Kingston, Rhode Island 02892, hereby make affidavit as follows under the pains and penalties of perjury:

1. I am the owner of Travis & Natalie, Inc., which owns the F/V Travis & Natalie.
2. The home port of the F/V Travis & Natalie is the port of Galilee in Narragansett, Rhode Island.
3. To the best of my knowledge, all crewmen that worked on the F/V Travis & Natalie, at the time the plaintiff worked aboard the vessel, were residents of southern Rhode Island.


FREDERICK J. MATTERA

Subscribed and sworn to me this 25th day of January, 2005.


Notary Public Michael T. Prew

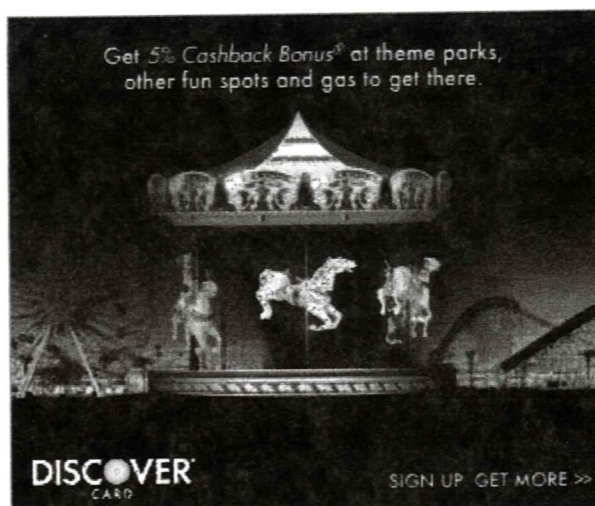
My commission expires: 6/2/06

Exhibit E



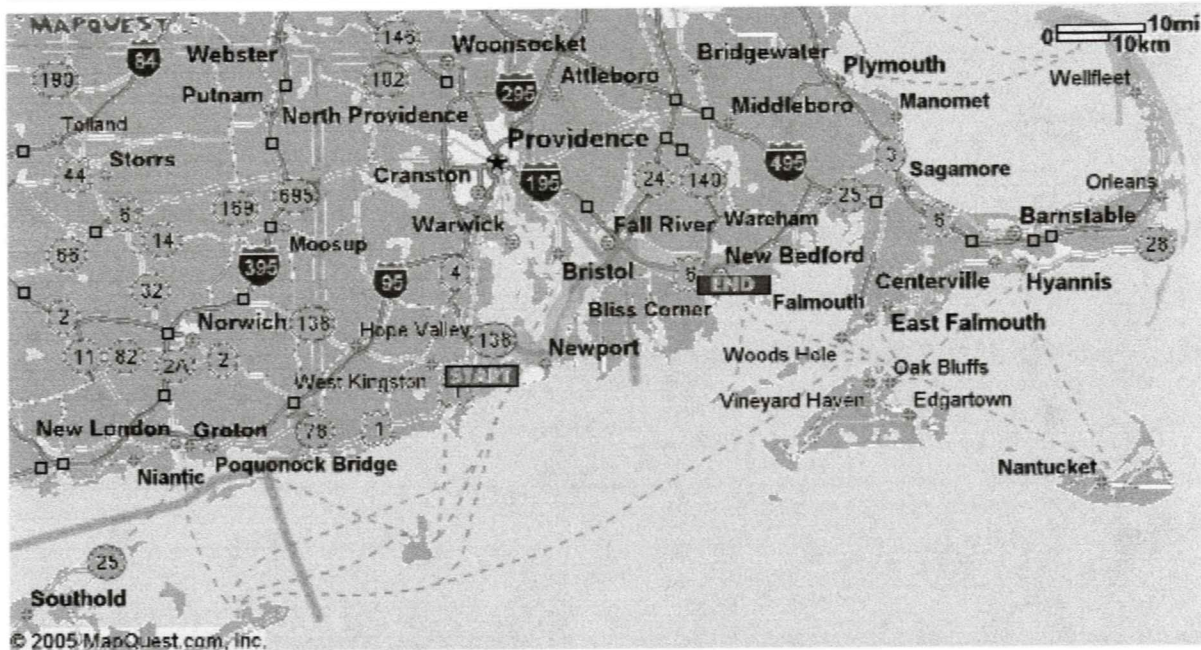
Start: Narragansett, RI US

End: Fairhaven, MA US



Directions	Distance
1: Start out going NORTH on BOSTON NECK RD/RI-1A toward OLD BOSTON NECK RD.	6.0 miles
2: Merge onto RI-138 E via the ramp on the LEFT toward JAMESTOWN/NEWPORT (Portions toll).	6.9 miles
3: Take the RI-138 E ramp toward RI-114 N/FALL RIVER/CAPE COD.	0.7 miles
4: Take the RI-138 N ramp toward RI-114/FALL RIVER/CAPE COD.	<0.1 miles
5: Turn LEFT onto RI-138 E/ADMIRAL KALBFUS RD.	0.6 miles
6: Turn LEFT onto RI-138/W MAIN RD. Continue to follow W MAIN RD.	6.6 miles
7: Stay STRAIGHT to go onto RI-114/W MAIN RD. Continue to follow RI-114 N.	0.5 miles
8: Merge onto RI-24 N toward I-195/FALL RIVER/PROVIDENCE.	9.4 miles
9: Merge onto I-195 E via EXIT 3 toward BOSTON/CAPE COD.	11.2 miles
10: Merge onto MA-18 S via EXIT 15 toward DOWNTOWN.	0.9 miles
11: Take the US-6 E exit toward FAIRHAVEN.	0.2 miles
12: Turn SLIGHT LEFT onto US-6 E.	0.9 miles

- ➡ **13:** Turn RIGHT onto MAIN ST. 0.3 miles
- ⬅ **14:** Turn LEFT onto SPRING ST. <0.1 miles
- ➡ **15:** Turn RIGHT onto WILLIAM ST. <0.1 miles
- END 16:** End at Fairhaven, MA US

Total Est. Time: 1 hour, 13 minutes**Total Est. Distance: 45.02 miles**

Start:
Narragansett, RI US

End:
Fairhaven, MA US

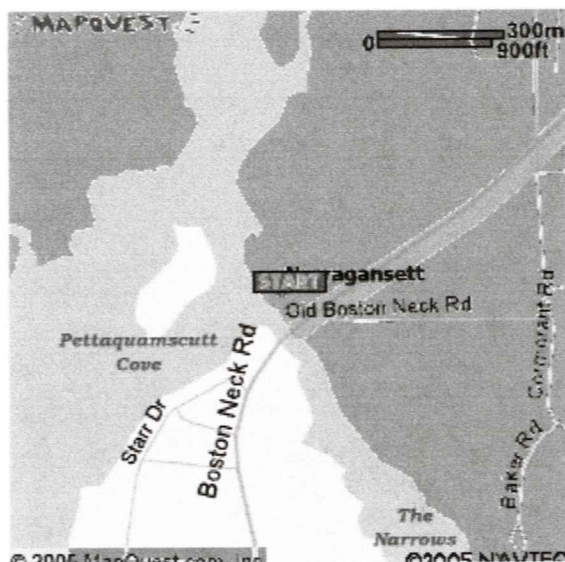


Exhibit F



Start: Narragansett, RI US
End: 1 Courthouse Way
 Boston, MA 02210-3002, US













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Directions	Distance
 1: Start out going NORTHEAST on BOSTON NECK RD/RI-1A toward OLD BOSTON NECK RD.	0.4 miles
 2: Turn SLIGHT LEFT onto OLD BOSTON NECK RD.	0.2 miles
 3: Turn LEFT onto MIDDLEBRIDGE RD.	1.0 miles
 4: Turn LEFT onto TORREY RD.	0.5 miles
 5: Turn RIGHT onto TOWER HILL RD/US-1 N.	5.1 miles
 6: Take RI-4 N.	9.9 miles
 7: RI-4 N becomes I-95 N.	44.3 miles
 8: Merge onto I-93 N/US-1 N via EXIT 12 toward BOSTON.	15.3 miles
 9: Take EXIT 20 toward I-90/LOGAN AIRPORT/WORCESTER/S. STATION.	0.4 miles
 10: Take the I-90 E exit on the LEFT toward LOGAN AIRPORT/SOUTH BOSTON.	1.0 miles
 11: Keep RIGHT at the fork in the ramp.	0.1 miles
 12: Keep LEFT at the fork in the ramp.	<0.1 miles

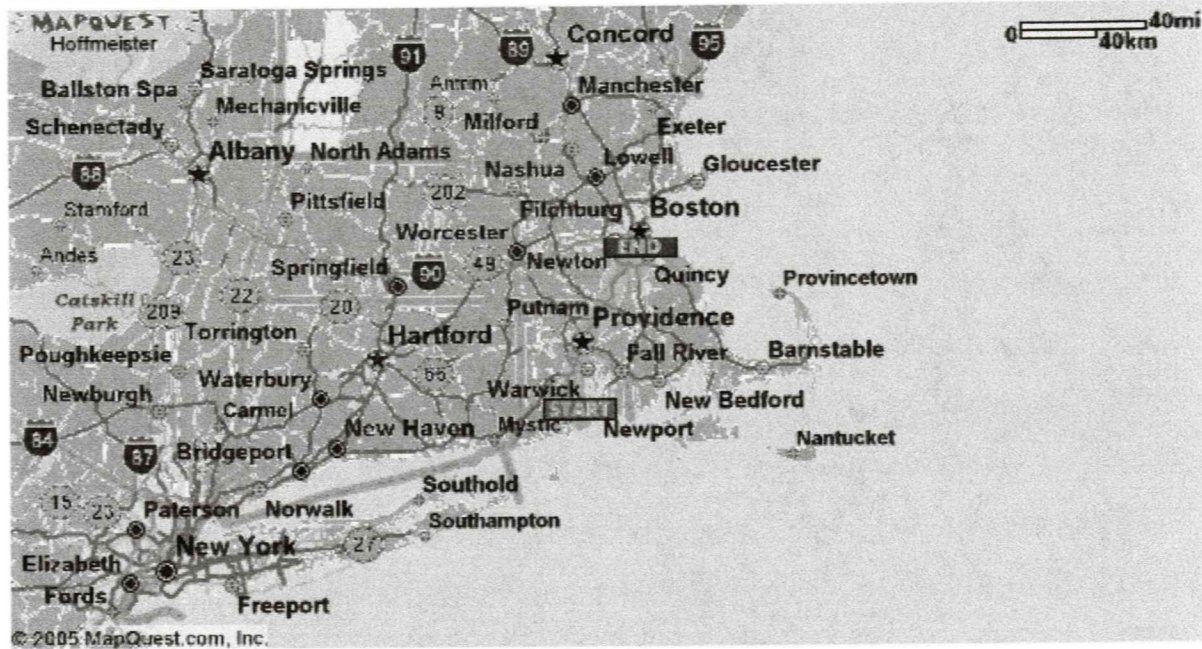
↑ **13:** Stay STRAIGHT to go onto E SERVICE RD. 0.1 miles

↑ **14:** E SERVICE RD becomes NORTHERN AVE. 0.2 miles

END **15:** End at **1 Courthouse Way**
Boston, MA 02210-3002, US

Total Est. Time: 1 hour, 33 minutes

Total Est. Distance: 79.22 miles



Start:
Narragansett, RI US

End:
1 Courthouse Way
Boston, MA 02210-3002, US

